

ATTACHMENT 7

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL)
ROBOT ANTITRUST LITIGATION) Case No.:
-----) 3:21-cv-03825-VC
THIS DOCUMENT RELATES TO:)
ALL CASES)
-----)
SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,)
)
Plaintiff,)
)
vs.)
)
INTUITIVE SURGICAL, INC.,)
)
Defendant.)
-----)

DEPOSITION OF:

JOHN WAGNER

TUESDAY, OCTOBER 11, 2022

9:05 a.m. Pacific Daylight Time

REPORTED BY:

Vickie Blair

CSR No. 8940, RPR-CRR

JOB NO. 5506653

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1 Deposition of JOHN WAGNER, the witness, taken on behalf
2 of the Defendant, on Tuesday, October 11, 2022,
3 9:05 a.m. Pacific Daylight Time, before VICKIE BLAIR,
4 CSR No. 8940, RPR-CRR.

5
6 APPEARANCES OF COUNSEL VIA ZOOM:

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8 FOR THE PLAINTIFF:

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7 ALSO PRESENT:

8 RAMON A. PERAZA, Videographer

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1 Q Do you recall how an even more substantial 11:47:55
2 discount was negotiated in the interim? 11:48:00
3 A I don't recall, no. 11:48:04
4 Q You weren't involved in asking Intuitive 11:48:04
5 for an additional discount on top of the previous one? 11:48:08
6 A Me personally? 11:48:11
7 Q Yes. 11:48:21
8 A Is that what you're asking? 11:48:21
9 Q You personally, yes. 11:48:23
10 A I don't recall if I was involved. 11:48:25
11 Q Okay. This email has a number of 11:48:26
12 attachments, but we're only going to look at a few of 11:48:37
13 them. Let's start with page three of the PDF. So it 11:48:40
14 ends on 15995. 11:48:46
15 A Okay. 11:48:56
16 Q This email from John Tull at Intuitive to 11:48:56
17 several folks at Valley includes, in the middle there, 11:48:59
18 a listing of the discounts that have been offered at 11:49:04
19 this point. 11:49:07
20 Do you see that? 11:49:08
21 A Yes. 11:49:08
22 Q So, at this point, the discount on the 11:49:10
23 table was \$249,000 if both Valley and NW moved forward 11:49:14
24 with the robot; is that fair? 11:49:21
25 A That's what's written here. 11:49:25

1 Q It notes, a little bit further down, 11:49:30
2 Mr. Tull wrote (as read): 11:49:34
3 Please note, Scott and I are seeking 11:49:35
4 approval for the pricing protection for an 11:49:38
5 additional Xi purchase in July 2019. 11:49:40
6 Do you see that? 11:49:43
7 A Yes. 11:49:43
8 Q Do you understand what he meant by that? 11:49:43
9 A I could speculate, but I-- 11:49:49
10 Q What's your -- your understanding, best 11:49:51
11 understanding of that? 11:49:53
12 A I presume he's referring to if we were to 11:49:54
13 purchase another Xi robot, that there would be some 11:49:59
14 protection of pricing should we choose to purchase 11:50:05
15 that. 11:50:09
16 Q Okay. So, if you look at -- we're going 11:50:09
17 to skip forward to -- the attachments were provided a 11:50:16
18 bit out of order in this one, but if you skip to page 11:50:23
19 51 of the PDF, it will end on 160- -- 16043 on the 11:50:27
20 bottom. 11:50:37
21 A 16043? 11:50:56
22 Q Yes. 11:50:58
23 A Yes. 11:50:59
24 Q This is a quote dated August 13, 2018. 11:50:59
25 Do you see that? 11:51:07

1	A	Yes.	11:51:07
2	Q	And this quote reflects the \$200,000	11:51:07
3		discount on the purchase of an Xi robot.	11:51:12
4		Do you see that?	11:51:16
5	A	Yes.	11:51:16
6	Q	That's an increase from the earlier quotes	11:51:16
7		we saw; right?	11:51:21
8	A	Yes.	11:51:22
9	Q	It includes the same \$25,000 discount on	11:51:25
10		the table; correct?	11:51:29
11	A	Are you referring to the -- the section	11:51:31
12		below?	11:51:41
13	Q	Yes.	11:51:41
14	A	Yes.	11:51:42
15	Q	And the proctoring and customer programs,	11:51:42
16		again, we talked about this on the last quote, those	11:51:45
17		are -- will be provided free; is that right?	11:51:47
18	A	On this quote it does, yes.	11:51:54
19	Q	And as with the previous quotes, the	11:51:56
20		service -- the quoted service fee is free for the first	11:51:58
21		year and then \$154,000 a year for the next four years;	11:52:03
22		is that right?	11:52:10
23	A	Yes.	11:52:10
24	Q	And then, under "Additional Information,"	11:52:10
25		it reads (as read):	11:52:13

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1 This quote will have a \$250,000 Si 11:52:14
2 trade value lock for 12 months. 11:52:18
3 Do you see that? 11:52:21
4 A Yes. 11:52:21
5 Q So, consistent with what you said earlier, 11:52:21
6 Mr. Wagner, does that mean that if Valley went to trade 11:52:26
7 in its Si within the next 12 months, they would receive 11:52:30
8 a \$250,000 discount? 11:52:34
9 A I believe that's what this states. 11:52:37
10 Q All right. If you look at page five of 11:52:39
11 the PDF, so near the top, the digits in the bottom will 11:53:03
12 be 15997 -- 11:53:13
13 A Okay. 11:53:13
14 Q -- this email was attached or included in 11:53:18
15 the first email we looked at, it's from, again, John 11:53:20
16 Tull to Lindy and Jodi dated August 20th, he writes (as 11:53:23
17 read): 11:53:23
18 Per our discussion Friday morning, 11:53:28
19 attached is the SLSA draft for Valley's 11:53:30
20 review and processing. 11:53:32
21 Do you understand what the SLSA was? 11:53:36
22 A No. 11:53:42
23 Q Mr. Tull writes (as read): 11:53:43
24 As a reminder, a fully executed SLSA 11:53:53
25 is required to acquire a da Vinci system. 11:53:56

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1 Mr. Wagner, to the contract that was attached, so it 12:10:49
2 will be -- begin on page four of the PDF, it ends in 12:10:54
3 2062 -- I'm sorry, 20652 on the bottom right. 12:10:58
4 Do you see that? 12:11:05
5 A Yes. 12:11:05
6 Q This is the sales, license, and service 12:11:05
7 agreement for the purchase of the Xi robot; is that 12:11:09
8 right? 12:11:17
9 A Yes. 12:11:17
10 Q And, if you turn to page -- what is page 12:11:17
11 eight of the contract, ending in 20659, you should see 12:11:23
12 Jeannine Grinnell's signature. 12:11:41
13 Do you see that? 12:11:45
14 A Yes. 12:11:45
15 Q This is consistent with what you testified 12:11:45
16 earlier, that it was ultimately Ms. Grinnell's decision 12:11:49
17 to purchase the Xi robot? 12:11:52
18 A She is the final step in authorizing the 12:11:55
19 purchase. 12:11:59
20 Q If you look at two pages after that one, 12:12:02
21 ending in 20661, it's a continuation of what's labeled 12:12:10
22 Exhibit A. 12:12:15
23 Do you see that? 12:12:17
24 A Yes. 12:12:17
25 Q So "Pricing," it indicates the price for 12:12:18

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1 the Xi robot was \$1.7 million. 12:12:25

2 Do you see that? 12:12:34

3 A Yes. 12:12:34

4 Q So, at this point, from the initial quote 12:12:34

5 that you had received earlier in 2018 to now, the price 12:12:41

6 had dropped by \$200,000; is that right? 12:12:45

7 A I believe so. 12:12:51

8 Q If you look at the "Annual Service Fees" 12:12:52

9 column of that table, it indicates the first year of 12:12:58

10 initial term was included in the system purchase price. 12:13:04

11 Do you see that? 12:13:17

12 A Yes. 12:13:17

13 Q And then, for subsequent years, two to 12:13:17

14 five, the price for the service plan was \$149,000 a 12:13:22

15 year. 12:13:26

16 Do you see that? 12:13:27

17 A Yes. 12:13:27

18 Q The -- the last quote we looked at, which 12:13:27

19 was Defendant's Exhibit 56, had indicated or quoted a 12:13:34

20 price of \$154,000 for service in years two through 12:13:39

21 five. 12:13:44

22 Do you have any recollection of how the 12:13:45

23 price was reduced another \$5,000 a year since that last 12:13:47

24 quote? 12:13:52

25 A I don't recall. 12:13:53

1 Q Okay. I'll represent to you we looked and 12:13:54
2 couldn't find a record of it, so I have no document to 12:13:58
3 show you. 12:14:01

4 And someone, presumably, at some point, 12:14:02
5 asked for an additional discount on the service fee? 12:14:04

6 A I -- I -- I don't know if that occurred or 12:14:07
7 not. 12:14:16

8 Q But we can agree that from the last quote 12:14:17
9 to this one, the price had dropped by \$5,000 a year for 12:14:21
10 service in those years? 12:14:27

11 A The price here listed is different than 12:14:30
12 the previous quote, yes. 12:14:35

13 Q Is it possible that the information ECRI 12:14:37
14 conveyed that we discussed earlier, that some 12:14:39
15 facilities had negotiated a discount in the service 12:14:45
16 fee, prompted Valley to ask for a discount on the 12:14:48
17 service fee? 12:14:50

18 A It's possible. 12:14:57

19 Q Do you remember one way or the other 12:14:59
20 whether that happened? 12:15:01

21 A I don't. 12:15:04

22 Q Okay. You can close that document. 12:15:04

23 But you said earlier, Mr. Wagner, you were 12:15:26
24 pleased with the job that your team did in procuring 12:15:29
25 this Xi robot in 2018? 12:15:32

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF LOS ANGELES)

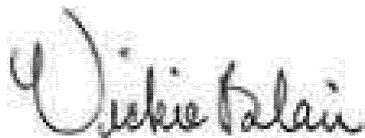
4 I, Vickie Blair, CSR No. 8940, RPR-CRR, in
5 and for the State of California, do hereby certify:

6 That, prior to being examined, the witness
7 named in the foregoing deposition was by me duly sworn
8 to testify as to the truth, the whole truth, and
9 nothing but the truth;

10 That said deposition was taken before me
11 at the time and place therein set forth, and was taken
12 down by me stenographically and thereafter transcribed
13 via computer-aided transcription under my direction and
14 is a true record of the testimony given;

15 I further certify I am neither counsel
16 for, nor related to, any party to said action, nor
17 interested in the outcome thereof;

18 IN WITNESS WHEREOF, I have hereto
19 subscribed my name this 20th day of October, 2022.

20
21
22
23
24 

25 Vickie Blair, CSR No. 8940, RPR-CRR